

LBNL – PROCUREMENT STANDARD PRACTICES

Subject: 47 Transportation
Exhibit: 47.2 Imports and Exports

PURPOSE: This standard practice (SP) provides guidance on subcontracting for equipment and supplies directly with foreign firms, and the application of duties.

POLICY: The Laboratory will ensure that subcontracts involving equipment and supplies coming from or going to foreign countries comply with U.S. Customs regulations.

SCOPE: This SP applies to all subcontracts involving the import or export of equipment and supplies.

DEFINITIONS:

Duty Duty is a tax charged by the Government, especially on imports.

Tariff Tariff is a list or system of duties imposed by the Government on imported or exported goods.

Customs Customs refers to the U.S. Customs Service which administers the Tariff Schedules of the U.S. Customs and determines the amount of duty owed, collects duties, imposes penalties, and determines whether an item can enter the country duty-free.

University's Customs Broker The University's Customers Broker is the firm used by the Laboratory to clear items through Customs. This firm is selected by the University and is under an agreement which can be used by all campuses and Laboratories.

PROCEDURES:

General Except as provided in the regulations of the U.S. Customs Service, all shipments of imported supplies are subject to the usual Customs entry and examination requirements. Unless the Laboratory obtains an exemption, these shipments are also subject to duty. The use of an improper procedure for shipment of material into this country can result in substantial sums of duty penalties being imposed on the Laboratory by Customs.

Coordination at LBNL All subcontracts involving shipment of items either into or out of this country require coordination with the Facilities Department's Site Services, which includes Shipping and Receiving.

Imports Requiring Payment of Duty Unless the foreign equipment or supplies being purchased qualify for duty-free entry (see below), they are subject to the payment of duty as provided for in the Tariff Schedules of the United States. The duty on some items of foreign origin can amount to a large sum and can have a significant impact on the evaluation of reasonableness of price.

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Solicitation/ Subcontract

Solicitations should indicate that the price of the item(s) and the estimated amount of duty be separately stated in the quotation or proposal. Likewise, the subcontract should be written for the amount of the items(s) only, with a statement that the duty will be paid separately through our Customs Broker when the item(s) enter the country.

Processing Through Customs

As soon as a subcontract is placed for materials that must go through Customs, the procurement specialist is responsible for notifying Receiving by memo or electronic mail of the following information:

- Subcontract Number
- Vendor (name only)
- Shipper (name only)
- Brief description of item(s)
- Port of entry
- Estimated date of entry
- Air bill or other shipping confirmation document, if available.
- Application for duty-free entry, if applicable (see below)

With this information, Receiving will work directly with the Laboratory's Customs Broker to assure that the item(s) clear Customs smoothly.

Special Delivery Permit

Under the provisions of 19 USC 1448(b) *Special Delivery Permit*, there are provisions for the issuance of "... special permits for delivery, prior to formal entry therefor, of perishable articles and other articles, the immediate delivery of which is necessary." If delivery is required before the normal Customs procedure can take place, the procurement specialist will work, through Receiving, with the Laboratory's Customs Broker to determine whether the item(s) and/or situation qualify for a special permit, and, if so, assure that the permit process is handled efficiently.

Payment of Duty

Once Customs has determined the exact amount of duty required, the Laboratory's Customs Broker will notify Receiving. Receiving will, in turn, provide the Customs Broker with the necessary paperwork to have the duty paid and billed to the Laboratory. Duty is treated similarly to transportation charges, which are paid outside of the subcontract. No direct Procurement involvement is required for the payment of duty.

Imports Eligible for Duty-Free Entry

Federal law provides for duty-free entry of certain kinds of equipment and supplies. See the paragraph below entitled, "Qualifications for Duty-Free Entry" for details on what items are

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eligible for duty-free entry.

Solicitation/ Subcontract

Solicitations should indicate that the price of the item(s) and the estimated amount of duty be separately stated in the quotation or proposal. Likewise, the subcontract should be written for the amount of the items(s) only, with a statement that an application for duty-free entry is pending.

Administrative Authority

15 CFR 301 issued jointly by the U.S. Department of Commerce and the Department of the Treasury, "... sets forth the regulations applicable to the duty-free importation of scientific instruments and apparatus by public or private nonprofit institutions." These regulations are the result of the Florence Agreement, a multinational treaty which included, in part, elimination of tariffs on certain educational, scientific and cultural materials. Public Law 89-651 implements the Florence Agreement in the U.S. and adds tariff items 851.60 and 851.65 to the Tariff Schedules to allow for duty-free importation of these items and their repair parts.

In general, the Department of the Treasury, through its U.S. Customs Service, determines if LBNL has met the application requirements for duty-free entry, while the U.S. Department of Commerce determines if any U.S. equivalent is available.

Qualifications for Duty-Free Entry

The procurement specialist, in consultation with the requester, the Seller, the Procurement Supervisor, the Facilities Department's Site Services Manager (or delegatee), and/or the University's Customs Broker, will determine whether the item(s) and their use qualify them for duty-free entry. In general, the qualifications for duty-free entry of apparatus or instruments require that:

- They must be used specifically for scientific research or science-related education;
- They must not be available from a domestic source of supply; and
- The Laboratory must not distribute, sell, or in any other way put the item(s) to commercial use within five years of their date of entry into the United States.

Examples of items which might qualify for duty-free entry, assuming they meet the above three qualifications, include: medical instruments, measuring and testing instruments, photographic equipment, vacuum containers, optical goods, metal-working machines, glass tubing, laboratory ceramic and glassware. Excluded are materials, supplies and equipment for use in support activities, construction, maintenance or any other non-scientific research or non-scientific educational purposes.

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Application and Approval Process

General

Applying for duty-free entry can take several months and involves a fair amount of time to be spent by Procurement, the requester and Receiving in preparing and implementing the application. It is therefore the policy of the Laboratory not to pursue duty-free entry when the estimated amount of duty is less than \$2,500. Generally, the Seller can tell the Laboratory what the estimated amount of duty is. If not, the procurement specialist, working through the Facilities Department's Site Services, can obtain an estimate from the University's Customs Broker.

Initiating the Application

Once it has been determined that application for duty-free entry will be pursued (see paragraphs above entitled "*General*" and "*Qualifications for Duty Free Entry*"), the procurement specialist will obtain the most current version of Form ITA-338P ("*Request for Duty-Free Entry of Scientific Instruments or Apparatus*") from the Procurement Forms Cabinet. This form is to be completed by the procurement specialist and the requester working together. If any attachments are needed, they are to be specifically cross-referenced to numbered entries on Form ITA-338. A different form must be used for each item. When completed, the original is to be signed by the person under whose direction and control the foreign item(s) will be used, and then returned to the procurement specialist. The Procurement Specialist will obtain the signature of the Laboratory individual under whose direction and control the foreign instrument will be used, then make nine copies of the form and all attachments for distribution as follows:

- Original and four copies are to be sent to the U.S. Customs Service (their address is on the form), and
- One copy each to the procurement specialist, Receiving, requester, Seller, and the University's Customs Broker.

Approval by Customs

When Customs receives the application it will determine the Laboratory's status as a non-profit scientific and educational institution, determine whether the item is eligible to enter the country duty-free, and determine whether the Laboratory meets the requirement to not use the item for commercial use for five years from the date of entry. If they are satisfied that the application is acceptable, they will assign it a docket number and forward it to the Department of Commerce (with a copy to the Laboratory) with the notation "Accepted for Transmittal to the Department of Commerce". With this document, the Laboratory can have the item processed through customs by sending a copy of the form to the Customs Broker through Receiving.

Approval by

When the Department of Commerce (Commerce) receives the

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Commerce Department

application it will determine whether the item(s) can be obtained from a domestic source of supply. In addition to employing scientific experts for this purpose, Commerce will publicly post the application as well as publish notice of the application in the Federal Register. If a domestic source of supply is identified, the application will be denied and the Laboratory and Customs will both be so informed. If no domestic source responds to the Federal Register notice within 20 days, Commerce will publish their final determination for duty-free entry. If no appeal of this determination is made within 20 days of its publication, the application will be considered to be fully approved and the Laboratory and Customs will receive notification to this effect.

Processing Through Customs

Items subject to duty-free entry can be processed through Customs in one of three different ways, as follows:

- If the items arrive at Customs before Customs has approved the duty-free application and forwarded it to Commerce, it is possible for the Laboratory's Customs Broker to pay the estimated amount of duty and have the item forwarded to the Laboratory. In this case, when Commerce notifies Customs of its final determination, Customs will liquidate the entry accordingly; either by returning or keeping the deposit.
- If the items are still waiting in Customs when Customs assigns a docket number and forwards the application to Commerce, then, when the procurement specialist receives a copy of the forwarded application, he/she should forward a copy to Receiving who, in turn, will request the Customs Broker to have the items processed through Customs and post a duty bond. In this case, when Commerce notifies Customs of its final determination, Customs will liquidate the entry accordingly; either by closing-out the entry or demanding that the duty be paid.
- If the items have not been shipped at the time that Commerce makes its final determination, both the seller and the University's Customs Broker should be furnished a copy of the approved application so that it can accompany the shipped items and pass quickly through Customs, duty-free. If the subcontract has not been awarded when the duty-free application is approved, the Laboratory has 60 days from the date of its approval within which to award the subcontract.

Transfer of Ownership Within Five years

The Laboratory may transfer ownership of items, duty-free, to another eligible institution, provided the latter institution agrees not to use the instrument for commercial purposes within five years of the date of entry of the items. If the Laboratory uses the items for commercial purposes or transfers ownership to an institution that is not eligible for duty-free status, the Laboratory is liable for the payment of duty on the basis of its condition as

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imported and the rate applicable to it. Under the terms of 15 CFR 301.9, Customs must be notified any time ownership is transferred within five years.

Repair Components

Under the provisions of 15 CFR 301.10, repair components may be entered duty-free by certifying to Customs, upon arrival, that the articles are repair components for an item previously entered and classified as duty-free. Formal application and review is not required for repair components. Both the seller and the University's Customs Broker must be notified that the parts are to be certified as duty-free repair components.

No Charge or Return

If the subcontract includes material or equipment being furnished to the Laboratory by the subcontractor at no cost (e.g. samples, mock-ups or models to be used prior to the purchased items being manufactured, etc.), such items are to be listed in the subcontract. This should be brought to the attention of the Facilities Department's Site Services so that arrangements may be made with Customs for either proper evaluation of duty or a scheduled date of return to the foreign supplier.

If a scheduled date of return has been established with the Customs Bureau, Facilities Department's Site Services is to be notified and/or consulted when any of the following occur:

- Action to return the material to the foreign supplier is initiated (so that Customs can be advised);
- The procurement specialist becomes aware that the material will not be returned to the foreign supplier by the scheduled date (so that a new date can be established); or
- The procurement specialist becomes aware that the material will not be returned to the foreign supplier (so that the proper evaluation of duties can be arranged with the University's Customs Broker, thus avoiding possible Customs duty penalties).

Subcontracts Involving Exporting

For purposes of this SP, shipping items to a foreign country for any purpose shall be considered exporting and shall be handled through the Facilities Department's Site Services Manager. For subcontracts involving the repair of Laboratory material, the Facilities Department Site Services Manager is to be notified prior to shipment of the material so that the necessary pre-declaration can be submitted to avoid import duties when the material is returned to the Laboratory.

REVIEWS AND APPROVALS:

The University has issued a written, formal delegation of authority to the Laboratory which identifies specific individuals at the Laboratory who are authorized to act on its behalf in matters relating to Customs. A list of these individuals is available from

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the Facilities Department's Site Services Manager.

RESPONSIBILITIES:

Procurement Specialist

The procurement specialist shall:

- Ensure that quotations of any import items include a separate estimate of the amount of duty owed;
- Ensure that subcontracts involving import items include a statement that, either the duty will be paid separately or an application for duty-free entry will be (or has been) submitted to Customs;
- Notify Receiving by memo whenever a subcontract involves imports;
- Notify the Facilities Department's Site Services Manager or delegatee whenever a subcontract involves exports;
- Ensure that the necessary paperwork is initiated if a Special Delivery Permit is requested or required for an imported item;
- Work with the requester to determine if duty-free entry is possible;
- Work with the requester to prepare the duty-free entry application form;
- Give the completed duty-free application form to the Procurement Supervisor to review;
- Obtain the final signature of the Laboratory individual under whose direction and control the foreign instrument will be used, mail to Customs, and distribute copies;
- Notify Receiving of each step in the duty-free application process;
- Work with the Facilities Department's Site Services Manager or delegatee to notify Customs whenever:
 - A duty-free item is to be transferred to another party within five years of its duty-free entry into the U.S.;
 - A duty-free item is expected to be used for a commercial purpose within five years of its duty-free entry into the U.S.;
 - A repair part is ordered for an item that entered the U.S. duty-free;
 - A no-charge item is being sent into or out of the U.S.; and
 - Any item that is part of a subcontract needs to be exported

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to a foreign country.

Procurement Supervisor

The Procurement Supervisor shall:

Work with the procurement specialist to process duty-free applications.

Facilities Department's Site Services Manager or Delegatee

The Facilities Department's Site Services Manager or delegatee shall:

- Assist the procurement specialist in determining the estimated amount of duty owed on an imported item, and
- Work with the procurement specialist and with Customs whenever:
 - A duty-free item is to be transferred to another party within five years of its duty-free entry into the U.S.,
 - A duty-free item is expected to be used for a commercial purpose within five years of its duty-free entry into the U.S.,
 - A repair part is ordered for an item that entered the U.S. duty-free,
 - A no-charge item is being sent into or out of the U.S., and
 - Any item that is part of a subcontract needs to be exported to a foreign country.

LBNL Receiving

LBNL Receiving shall:

- Work with the procurement specialist and with the University's Customs Broker to assure that all imported items clear customs smoothly and that duty owed is paid promptly, and
- Notify the University's Customs Broker of each step in the duty-free application process.

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Requester

The requester shall:

- Work with the procurement specialist to determine if duty-free entry is possible;
- Work with the procurement specialist to prepare the duty-free entry application form;
- On the duty-free entry application form, obtain the signature of the person under whose direction and control the foreign item(s) will be used; and
- Advise the procurement specialist whenever:
 - A duty-free item is to be transferred to another party within five years of its duty-free entry into the U.S.,
 - A duty-free item is expected to be used for a commercial purpose within five years of its duty-free entry into the U.S.,
 - A repair part is needed for an item that entered the U.S. duty-free,
 - A no-charge item is being sent into or out of the U.S., and
 - Any item that is part of a subcontract needs to be exported to a foreign country.

REFERENCES:

Application Form ITA-338, *Request for Duty-Free Entry of Scientific Instruments or Apparatus*.

U.S. Department of Commerce and Department of The Treasury Joint Regulations (15 CFR 301), as amended by 50 FR 11500 regarding the duty-free importation of scientific instruments and apparatus by educational and scientific public or private nonprofit institutions.

Public Law 89-651, the Educational, Scientific, and Cultural Materials Importation Act of 1966 (19 U.S.C. 1202).

Items 851.60 and 851.65 of the Tariff Schedules of the United States (TSUS).

19 U.S.C. 1448(b), *Special Delivery Permit*.